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HAROLD B. WILLEY, Cle

No. 208

In the

Supreme Court of the United States

F. O. WILEMON, *et al.*,

Petitioners,

v.

CITY AND COUNTY OF DALLAS LEVEE IMPROVEMENT DISTRICT, *et al.*,

Respondents.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI ON BEHALF OF F. O. WILEMON AND A. E. WILEMON

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Petitioners,

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CITY AND COUNTY OF DALLAS LEVEE IMPROVEMENT DISTRICT, *et al.*,

Respondents.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI ON BEHALF OF F. O. WILEMON AND A. E. WILEMON, TO REVIEW A JUDGMENT OF THE COURT OF CIVIL APPEALS IN THE 8TH SUPREME JUDICIAL DISTRICT OF TEXAS, AND DENIAL OF WRIT OF ERROR BY SUPREME COURT OF TEXAS, AND ORDER OVERRULING MOTION FOR REHEARING.

To the Supreme Court of the United States:

I.

GROUNDS UPON WHICH PETITIONERS BASE THEIR PETITION FOR REHEARING

Time for Filing

The time for filing this Motion under Supreme Court Rule #58 was fixed by a stay order of the Court of Civil

Appeals at El Paso dated October 27, 1954, upon motion duly made by petitioners by which order execution was stayed to November 4, 1954.

JURISDICTION

Petitioners rely upon the grounds showing jurisdiction of the Supreme Court as set out in their petition for Writ of Certiorari heretofore filed.

STATEMENT OF ADDITIONAL ASPECTS OF THE CASE

In the various steps of this case there are obvious errors which show clearly that petitioners have not been accorded their rights under the due-process-of-law provisions of the Constitution of the United States heretofore recited.

First. Respondents (called plaintiffs herein for consistency) have not proved in any wise in the case that the land in dispute was, or is being, taken in accordance with the laws of Texas. Article 7880-126 (Acts 1925, 39th Legislature) of the Revised Statutes of Texas, provides for taking of land by Water Control and Improvement Districts reciting that they may "proceed for condemnation under * * * Title 52, Eminent Domain, of the Revised Civil Statutes of Texas, Code of the Year 1925," Section (m) of the same reciting "It is specifically provided that nothing in this section shall empower a District to condemn any land * * * held by another person * * * save and except * * * to serve a public need superior to * * * the use to which any such property may have been devoted." Section (n) reciting

"Any County, Levee District * * * may elect to proceed to condemnation under the provisions of * * * this act, having regard only to causing such proceedings to conform to the law of the being of any such governmental agency."

Petitioners urge that plaintiffs did not proceed under the Condemnation Statutes (Title 52) at any time and are not so proceeding in this case. Title 52 of said Statutes, dealing with Eminent Domain, sets out, step by step, how plaintiffs shall proceed to condemn; they have not begun such proceedings as yet. Their whole case is a reliance on alleged acquiescence of defendants (petitioners herein), but have not come forth with any proof of acquiescence.

Second. The Courts, in this case, have utterly disregarded defendants' able contention for, and claim for, compensation, and have erroneously held that defendants shall have no compensation, as the Condemnation Statutes provide, for either the land or the valuable improvements which defendants placed upon the land in sight of, and with the knowledge and apparent acquiescence of, the plaintiffs, to-wit, a building costing approximately $37,000.00.

Third. Plaintiffs' whole claim seems to be based upon the fact that a map drawn upon a piece of paper in 1926 showed a line that they claim is the true line of the river bank. They have failed to show, however, that such map was at any time called to the attention of defendants or their ancestors in title either expressly or constructively. Section (K) of the above-quoted Article 7880-126 provides for the type of legal notice that shall go to all property owners that may be affected by proper condemnation proceedings, said

notice containing, among other things, the following: "To the owners of * * * lands or other property * * * lying in * * * take notice that a copy of the adopted plans of improvement by * * * are now open to inspection * * * at the District's office at * * *. The plans, contour maps and specifications will make manifest how your property will be affected." Defendants have never had an opportunity to defend any legal proceedings aimed at taking the land in question which defendants can show lies between the true river bank and the line fixed on paper by the map. Plaintiffs have failed wholly to correlate that map line with any metes and bounds description or markers in place upon the lands.

WHEREFORE, defendants pray that this Honorable Court rehear and reconsider defendants' petition for Writ of Certiorari in this cause, together with all relief for which defendants have heretofore prayed.

Respectfully submitted,

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Of Counsel:
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HERBERT S. BONNEY, JR.

I, M. M. WADE, attorney for petitioners, certify that this petition for rehearing is presented in good faith, and not for delay, and further that the petition contains substantial grounds and citations of pertinent law not previously presented.

M. M. WADE,
Attorney for Petitioners